

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT TACOMA**

10 LAUREL PARK COMMUNITY, LLC, a
11 Washington limited liability company;
12 TUMWATER ESTATES INVESTORS, a
13 California limited partnership;
14 VELKOMMEN MOBILE PARK, LLC, a
15 Washington limited liability company; and
16 MANUFACTURED HOUSING
17 COMMUNITIES OF WASHINGTON, a
18 Washington non-profit corporation,

19 Plaintiffs,

20 vs.

21 CITY OF TUMWATER, a municipal
22 corporation,

23 Defendant.

NO. Co9-5312 BHS

**REPLY DECLARATION OF
JEFFREY S. MYERS**

24 PURSUANT TO 28 U.S.C. § 1746, Jeffrey S. Myers, hereby declares as follows:

25 1. I am the attorney for the defendant City of Tumwater in the above entitled
26 matter. I am over the age of 18, competent to be a witness and make this declaration on
27 personal knowledge.

28 2. Attached to this declaration as **Exhibit A** is a true and correct copy of
29 excerpts from the deposition of James W. Andersen, taken January 29, 2010. These
30 portions relate to Mr. Anderson's understanding of an offer from Fenton Properties that
31 was handled by their Realtor, Bill Jackson.

**REPLY DECLARATION OF
JEFFREY S. MYERS – 1**

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 RW JOHNSON RD., TUMWATER, WA 98512
PO BOX 11880, OLYMPIA, WA 98508-1880
(360) 754-3480 FAX: (360) 357-3511

3. Attached to this declaration as **Exhibit B** is a true and correct copy of excerpts from the deposition of Robert Eichler, taken February 15, 2010.

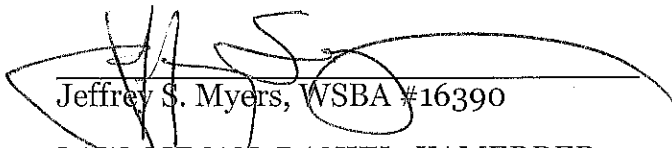
4. Attached as **Exhibit C** is a true and correct copy of excerpts from the deposition of Jeanne-Marie Wilson, taken February 15, 2010.

5. Attached as **Exhibit D** is a true and correct copy of a memorandum entitled "Summary of Phone Conversation W/ Jim Nissing" dated February 9, 2010. This memorandum was produced to Defendants pursuant to subpoena duces tecum from the files of Jeanne-Marie Wilson. It was transmitted from Walter Olsen to me on March 9, 2010 and was received by my office on March 11, 2010.

I declare under penalty of perjury under the laws of the state of Washington and the United States of America that the foregoing is true and correct.

DATED this 17th day of March, 2010, at Tumwater, Washington.

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.



Jeffrey S. Myers, WSBA #16390

LAW, LYMAN, DANIEL, KAMERRER
& BOGDANOVICH, P.S.
P.O. Box 11880
Olympia, WA 98508-1880
(360) 754-3480
Fax: (360) 357-3511
E-mail: jmyers@lldkb.com

MYERS

EXHIBIT A

James W. Andersen
 Laurel Park Community, LLC, et al. v. City of Tumwater

Page 1

UNITED STATES DISTRICT COURT
 THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

LAUREL PARK COMMUNITY, LLC, a
 Washington limited liability
 company; TUMWATER ESTATES
 INVESTORS, a California limited
 partnership; VELKOMMEN MOBILE
 PARK, LLC, a Washington limited
 liability company; and
 MANUFACTURED HOUSING COMMUNITIES
 OF WASHINGTON, a Washington
 non-profit corporation,

Petitioner(s),

vs.

CITY OF TUMWATER, a municipal
 corporation,

Defendant(s).

No. C09-5312 BHS

DEPOSITION UPON ORAL EXAMINATION OF

JAMES W. ANDERSEN

January 29, 2010
 Tumwater, Washington

Taken Before:

SUE E. GARCIA, CCR # 2781, RPR
 Registered Professional Reporter
 of

Capitol Pacific Reporting, Inc.
 2401 Bristol Court SW, #A-104, Olympia, WA 98502
 Tel (360) 352-2054 Fax (360) 705-6539
 Toll Free (800) 407-0148

Tacoma	Seattle	Aberdeen	Chehalis	Bremerton
(253)	(206)	(360)	(360)	(360)
564-8494	622-9919	532-7445	330-0262	373-9032

e-mail: admin@capitolpacificreporting.com

www.capitolpacificreporting.com

January 29, 2010

Capitol Pacific Reporting-1-800-407-0148

MYERS DEC.
 A 2

1 since our computer's basically brand-new -- and I'm not
2 real computer savvy, but I'll go back and see if
3 there's any e-mails. But I can basically guarantee
4 that I'm not going to find anything.

5 Q Okay.

6 A But if there is --

7 Q Okay. But my question is:

8 When you got this, to respond to it, you did not
9 check your e-mail to see --

10 A I never --

11 Q -- is that correct?

12 A When I saw that, I didn't think that I had any e-mails
13 that were pertaining to the sale, that really pertained
14 to it. All -- the majority of our conversations -- I
15 don't know even know if prior to six months ago for
16 sure that he had anything via e-mail, that he was
17 sending me anything until six months ago. Everything
18 was basically verbal. He would call me at work. He'd
19 call me at home.

20 Q Okay. How did you learn that this purchase from Fenton
21 Properties was not going to go through?

22 A Jackson.

23 Q And how did Jackson communicate that to you?

24 A That they weren't interested.

25 Q Did he call on the phone, or did he send you an e-mail,

1 or . . . ?

2 A I believe it was -- actually came through the attorney.
3 The original one came through the attorney.

4 Q Did you ask that attorney to produce documents
5 regarding this offer to purchase your mobile home park
6 in response to receiving Request for Production No. 1?

7 A No.

8 Q Why not?

9 A Didn't think I needed to because our family had the
10 majority of the documents that you requested.

11 Q Did you provide any other documents, other than what is
12 Exhibit A to your declaration in Exhibit 7, in response
13 to our Request for Production No. 1?

14 A Say that again.

15 Q The only document I've seen concerning the Fenton
16 Properties' sale --

17 A Right.

18 Q -- is this attachment to your declaration.

19 A That's all Fenton Properties, I believe, has given us.

20 Q My question was:

21 In response to Request for Production No. 1, did
22 you produce any other documents about that transaction,
23 or is this the sum total of all the documents that
24 Velkommen, LLC, has?

25 A Regarding the Fenton property, I believe that is all we

January 29, 2010

Capitol-Pacific-Reporting-1-800-407-0148

1 have, all Velkommen has.

2 Q Is there some other person who might have documents?

3 A I am not aware. If there is anything, maybe NW Brokers
4 might have something.

5 Q Did you ask NW Brokers to provides any documents to you
6 in response to our request for production?

7 A No.

8 Q Okay. With respect to the Fenton Properties offer, was
9 there any discussion about their future plans for the
10 property with you or -- and the brokers or anybody
11 concerning --

12 A I didn't have the discussion.

13 Q Are you aware if anybody else did?

14 A I am not aware.

15 Q So it's possible that Fenton Properties intended to use
16 the property as a mobile home park in perpetuity?

17 A I would really doubt it.

18 Q Did they tell you that they intended to convert the
19 property to a different use?

20 A They did not say that. I didn't have conversations
21 with them.

22 Q And that information was never relayed to you through
23 the broker or the attorney or anybody else?

24 A No.

25 Q The second -- let's go ahead and have this one marked.

January 29, 2010

MYERS DEC.

Capitol Pacific Reporting 1-800-407-0148

A 5

MYERS

EXHIBIT B

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT TACOMA
4

5 LAUREL PARK COMMUNITY, LLC, a)
6 Washington limited liability)
7 company; TUMWATER ESTATES)
8 INVESTORS, a California limited)
9 partnership; VELKOMMEN MOBILE)
PARK, LLC, a Washington limited)
liability company; and)
MANUFACTURED HOUSING COMMUNITIES)
OF WASHINGTON, a Washington)
non-profit corporation,)

No. C09-5312 BHS

10 Plaintiffs,)
11)

12 vs.)
13)

14 CITY OF TUMWATER, a municipal)
15 corporation,)
16)

17 Defendant.)
18)

19 DEPOSITION UPON ORAL EXAMINATION OF
20 ROBERT EICHLER
21 February 15, 2010
22 Tumwater, Washington

23 Taken Before:
24 Connie Church, CCR #2555, RPR, CRR
25 Certified Court Reporter
of

26 CAPITOL PACIFIC REPORTING, INC.
27 2401 Bristol Court SW, Suite A-104
28 Olympia, WA 98502
29 Tel (360) 352-2054 or (800) 407-0148 Fax (360) 705-6539

30 www.capitolpacificreporting.com
31 admin@capitolpacificreporting.com
32

February 15, 2010

MYERS DEC

Capitol Pacific Reporting, Inc. (800) 407-0148

B 7

Laurel Park v. City of Tumwater
Deposition of Robert Eichler

Page 22

1 Q (BY MR. MYERS) Mr. Eichler, I'm going to show you
2 another exhibit, which has been marked as Exhibit 4. And
3 this is a letter from Century Pacific dated March 9,
4 2007. Does this letter contain the market analysis we
5 were just discussing?

6 A Yes.

7 Q Okay. And on the first page, which has a number in the
8 corner of 222, there is a statement there which said,
9 "These numbers suggest that it may make more sense to
10 continue operating this property as a mobile home park
11 and/or taking it to market on the basis of a mobile home
12 park and not a development opportunity." Do you see that
13 statement?

14 A I remember it. Yes.

15 Q Okay. Did you agree with that statement?

16 A Yes.

* 17 Q So based on the analysis that Century Pacific did in
18 early 2007, you agreed that, at that point in time, the
19 highest and best use of the property was as a mobile home
20 park?

21 A Yes.

22 Q Has there been any change in conditions since March of
23 2007 that would create demand for redevelopment of the
24 property?

25 A I believe if I have my dates right, that there was a

February 15, 2010

MYERS DEC.
B 8

Capitol Pacific Reporting, Inc. (800) 407-0148

Laurel Park v. City of Tumwater
Deposition of Robert Eichler

Page 37

1 Q Well, you've drafted this and signed it on January 25th,
2 2010. And this talks about your expectations in 2008
3 when the annexation was pending. At that point in time,
4 did you have a plan to redevelop the property within any
5 certain time period?

6 A My only plan to redevelop the property was when the time
7 came that the highest and best use - demand for the
8 property would be for the higher and better use. And I
9 really didn't know if it was next year, two years from
10 now, five years from now. I bought the property in 1991
11 knowing that the highest and best use, value at that time
12 was a mobile home park. And I looked to the future and
13 hoped for the future that in my lifetime, the demand for
14 that property would be for me to develop it into the
15 zoning that was on the property. I've never had an exact
16 time and date, because I've had to wait for the
17 opportunity to present itself.

18 Q Okay. The last sentence of paragraph 5, you discussed
19 the city had begun a process to rezone the park in 2007.
20 When did you first become aware that Tumwater was in the
21 process to rezone mobile home parks?

22 A I don't know that I can pin down any date, but certainly
23 after the annexation. And I think the annexation was in
24 December of 2007. And I wasn't aware of that - anything
25 they were going to do to change the ordinance until

February 15, 2010

MYERS DEC.
B 9

Capitol Pacific Reporting, Inc. (800) 407-0148

* L 1 A Because the highest and best use of my property right now
2 is a mobile home park.

3 Q Is operation of a mobile home park currently an
4 economically viable use for you?

5 A In today's market. Not tomorrow's market. But today's
6 market when there is no demand for building because of
7 the recession, the operation of Laurel Park Estates is a
8 viable use for me.

9 Q Do you make a . . . Do you distinguish between an
10 economically viable use and what would be the highest and
11 best use if you were allowed other types of uses for the
12 property?

13 A I'm not sure I understand the question.

14 Q I'm not sure I do either. Let me try to rephrase. Is
15 there a difference, in your mind, between what would be
16 the highest and best use of the property and economically
17 viable use of the property?

18 A I'll still try to understand that. Economically viable
19 use of the property should really be the highest and best
20 use of the property.

21 Q Let me ask you some questions about the effect of the
22 zoning ordinance on your operations at Laurel Park. Has
23 the adoption of the mobile home park zoning forced you to
24 incur any additional costs other than the costs of the
25 lawsuits?

MYERS

EXHIBIT C

Laurel Park v. City of Tumwater
Deposition of Jeanne-Marie Wilson

Page 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LAUREL PARK COMMUNITY, LLC, a)
Washington limited liability)
company; TUMWATER ESTATES)
INVESTORS, a California limited)
partnership; VELKOMMEN MOBILE)
PARK, LLC, a Washington limited)
liability company; and)
MANUFACTURED HOUSING COMMUNITIES)
OF WASHINGTON, a Washington)
non-profit corporation,)

No. C09-5312 BHS

Plaintiffs,)

vs.)

CITY OF TUMWATER, a municipal)
corporation,)

Defendant.)

DEPOSITION UPON ORAL EXAMINATION OF
JEANNE-MARIE WILSON
February 15, 2010
Tumwater, Washington

Taken Before:
Connie Church, CCR #2555, RPR, CRR
Certified Court Reporter
of

CAPITOL PACIFIC REPORTING, INC.
2401 Bristol Court SW, Suite A-104
Olympia, WA 98502
Tel (360) 352-2054 or (800) 407-0148 Fax (360) 705-6539

www.capitolpacificreporting.com
admin@capitolpacificreporting.com

February 15, 2010

Capitol Pacific Reporting, Inc. (800) 407-0148

Laurel Park v. City of Tumwater
Deposition of Jeanne-Marie Wilson

Page 59

1 Q That refers to an opinion as to after valuation?

2 A You asked me . . . This report was limited in scope not
3 to include the after. So I'm confused.

4 Q I thought you might be getting a little confused.

5 A Okay. Sorry.

6 Q So let me back up and see if we can clear this up. Your
7 opinions in paragraph 17 concerning valuing the real
8 property after the zoning ordinance --

9 A Right.

10 Q -- those are not discussed anywhere --

11 A Correct.

12 Q That's all I was asking.

13 A Okay. Sorry. Yeah.

14 Q Okay. In paragraph 18, you mention the current downturn
15 in the business cycle. How does the current downturn in
16 the business cycle affected the value of the three mobile
17 home parks at issue here?

* 18 A Well, when you consider the value of the underlying land
19 under its highest and best use, because subdivisions
20 currently are oversupplied, it wouldn't likely be a
21 conclusion of highest and best use because of the
22 recession and . . .

23 Q So it would be fair to say that the recession has eroded
24 the market to convert the property to either a
25 single-family subdivision or a multifamily property. Is

February 15, 2010

MYERS DEC.
C 13

Capitol Pacific Reporting, Inc. (800) 407-0148

1 that a fair statement?

* 2 A In the immediate time frame. Yes.

3 Q Okay. Have you done any analysis to determine when the
4 market might take an upswing in the future?

5 A It's the basis of conversation. But I haven't done any
6 specific analysis.

7 Q Do you have any opinions as to when the market will take
8 an upswing in the future?

* 9 A I think 2010 is going to be flat. And after that, I
10 think it's anybody's guess.

11 Q Do you have any opinions as to when the park owners might
12 be able to realize their expected return on the
13 investment by changing to a different use if the zoning
14 ordinance had not been adopted?

15 A Have I done any analysis to determine when they could do
16 that?

17 Q Yes.

18 A Okay. No.

19 Q Your opinions in paragraph 20 concerning the impact of
20 value for Velkommen, what impact do you have - do you
21 attribute to the offers of 1.75 and 1.6 million that were
22 made to Velkommen?

23 A I believe they were associated with potential
24 redevelopment or alternative uses of the property.

25 Q And how did you determine that those were based on

Laurel Park v. City of Tumwater
Deposition of Jeanne-Marie Wilson

Page 80

1 A It's just the review from - his review that I'm saying
2 that.

3 Q Have you done an analysis which you believe is consistent
4 with USPAP in order to offer the opinion that
5 Mr. Shapiro's analysis is inflated?

6 A Yes.

7 Q And what is that analysis?

8 A I read his report and followed USPAP under the review.

9 Q Under the review criteria?

10 A Right.

11 Q Would you tell me what those criteria are?

12 A If I had my USPAP.

13 Q Your understanding of them.

14 A It's very similar to the reporting - or the preparation
15 of a regular report. You state the property, the
16 ownership, the intended use and user. You read the
17 report and give your opinions as to whether or not they
18 followed proper appraisal methods. And I did not prepare
19 or state whether or not his - I agreed with his value
20 conclusion, nor did I prepare a value conclusion of my
21 own, which is allowed under USPAP.

22 MR. MYERS: Let's take a two-minute break,
23 because I think we're just about done.

24 (Recess was taken.)

25 Q (BY MR. MYERS) Ms. Wilson, have you done any analysis of

February 15, 2010

Capitol Pacific Reporting, Inc. (800) 407-0148

MYERS DEC.
C 15

1 the report prepared by William Partin in this case?

2 * A I read through that document there (indicating).

3 Q Have you been asked to form any opinions concerning that?

4 A No.

5 MR. MYERS: Okay. That's all.

6 (Concluded at 11:37 a.m.)

7 (Signature reserved.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MYERS

EXHIBIT D

SUMMARY OF PHONE CONVERSATION W/ JIM NISSING

- * |
- JIM HAD VELKOMMENT UNDER CONTRACT FOR \$1.6 MILLION. DEAL FELL THROUGH B/C SELLER ONLY WANTED TO GIVE WATER RIGHTS FOR 10 YEARS & HE DIDN'T WANT TO EXTEND WATER – TOO COSTLY AT THE TIME.
 - HE PLANNED TO POSSIBLY CONDO THE PROPERTY AND SELL INDIVIDUAL LOTS TO THE EXISTING TENANTS. AT THE TIME FINANCING WAS AVAILABLE & TENANT COULD ROLL THE LAND PURCHASE IN W/ THEIR EXISTING HOME MORTGAGE (IF ANY).
 - HE WAS WILLING TO PAY A PREMIUM ABOVE THAT OF THE EXISTING MHP INCOME STREAM FOR THE POTENTIAL TO CONDO. RELATIVELY INEXPENSIVE LEGAL / SURVEY COST VS. CLOSE PARK AND REDEVELOP AS SUBDIVISION LAND W/ LOTS, ETC. HE IS TAKING ADVANTAGE OF EXISTING INFRASTRUCTURE / USE AND CAPITALIZE ON UNDERLYING LAND VALUE OF MFM ZONED LAND.
 - HE OWNS 2 OTHER PARKS IN THURSTON COUNTY, 1 IN LEWIS & 6 IN ARIZONA.
 - BUYING OLDER PARKS W/ FUTURE REDEVELOPMENT (UPSIDE) POTENTIAL IS HIS ENTIRE BUSINESS PLAN –CAPITALIZE ON UNDERLYING LAND VALUE AS EXIT STRATEGY.
 - COACH POST MHP NEAR CAPITOL HOSPITAL IS ANOTHER EXAMPLE – MAY BE REDEVELOPED AS ELDER CARE FACILITY. SURROUNDED BY NEW SUBDIVISION ON 1 SIDE & MEDICAL CLINIC ON THE OTHER.
 - BOUGHT REDWOOD NEXT TO GREAT WOLF LODGE 6-7 YEARS AGO. RUMORS AT THAT TIME OF LODGE COMING IN TO BUILD. HE IS NOW IN NEGOTIATION W/ TRIBE TO PURCHASE PARK (AC ZONED LAND) FOR 2-3 TIMES WHAT HE PAID FOR IT.

2/9/10 jmw